116-248

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~[illegible]~~ 554

THE UTAH AND NORTHERN RAILWAY COMPANY, APPELLANT,

vs.

WILLIAM F. FISHER, ASSESSOR AND EX-OFFICIO COLLECTOR OF TERRITORIAL AND COUNTY TAXES IN AND FOR ONEIDA COUNTY, IDAHO TERRITORY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF IDAHO.

FILED AUGUST 20, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 900.

THE UTAH AND NORTHERN RAILWAY COMPANY, APPELLANT,

vs.

WILLIAM F. FISHER, ASSESSOR AND EX-OFFICIO COLLECTOR OF TERRITORIAL AND COUNTY TAXES IN AND FOR ONEIDA COUNTY, IDAHO TERRITORY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF IDAHO.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Complaint.*

In the District Court of the Third Judicial District.

TERRITORY OF IDAHO, *County of Oneida:*

THE UTAH AND NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

WILLIAM F. FISHER, Assessor and *ex-officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Defendant.

The said plaintiff, by Williams and Young, its attorneys, brings this its bill of complaint against the said defendant, and for cause of action alleges:

That the said plaintiff is a corporation created and existing in the Territories of Utah, Idaho, and Montana, under and by virtue of its articles of association adopted in pursuance of the provisions of an act of the Legislature of Utah Territory entitled "An act providing for the incorporation of railroad companies and the management of the affairs thereof," approved February 12th, A. D. 1869, and under and by virtue of an act of the Congress of the United States entitled

"An act creating the Utah and Northern Railway Company, a
2 corporation in the Territories of Utah, Idaho, and Montana, and granting the right of way to said company through the public lands," approved June 20th, A. D. 1878.

That the said plaintiff is the owner of and is now operating a railroad extending into and through the said county of Oneida and Territory of Idaho, known as and called the Utah and Northern railway, together with the depots, rolling-stock, and all other property belonging thereto and used in connection therewith.

Plaintiff further alleges that the said defendant is the assessor and *ex-officio* collector of taxes in and for said Oneida county, and is now, and at all the times hereinafter mentioned was, acting in that office.

Plaintiff further alleges that there is within the exterior boundaries of the said Oneida county a large tract of land reserved by the United States and set apart as a reservation for the Bannock Indians; the said reservation being commonly called and known as the Fort Hill Indian reservation. And plaintiff alleges that the whole of said tract of land and territory included within said Indian reservation is excepted out of and constitutes no part of the Territory of Idaho or the said county of Oneida, and that neither the said Territory nor county has any jurisdiction or authority whatever to levy or collect taxes on property situated and being on said reservation.

Plaintiff further alleges that a portion of its said railroad
3 so included and being within the exterior boundaries of said Oneida county, to wit, all that portion thereof beginning at the point where the same crosses the southern boundary line of said reservation, the said point being at or near Red Rock and extending thence northerly sixty-nine and $\frac{18}{100}$ ($69\frac{18}{100}$) miles to the crossing of

the Blackfoot river, the northern boundary line of the same, together with and including the depots, depot grounds, rolling stock, and all other property belonging to or used in connection with the said portion of the said railroad, are situated within the boundaries of and upon the said Indian reservation, and are not subject to taxation for any purpose whatever under the laws of the said Territory of Idaho.

That notwithstanding all of the aforesaid facts and well knowing the same the said defendant, as assessor of the said county of Oneida, did, between the first Monday of April and the first Monday of August, A. D. 1882, unlawfully and to the great wrong and injury of the plaintiff, assess for the year 1882 all that portion of its railroad and other property situated and being upon the said Indian reservation as aforesaid.

And plaintiff further alleges that there has been unlawfully and wrongfully, and to its great damage and injury, levied upon its said property so situated upon said reservation, for the year A. D. 1882,
4 a tax for territorial and county purposes for the said Territory of Idaho and for the said county of Oneida, amounting, in the aggregate, to the sum of four thousand four hundred and seventy-eight and $\frac{42}{100}$ ($4,478.42) dollars.

And plaintiff avers that lately, on the 27th day of November, 1882, the said defendant, as such assessor and *ex-officio* collector of taxes in and for said county, claiming and pretending that the said tax so levied on plaintiff's said property is valid, and that the same was then delinquent, caused a notice of said alleged delinquency to be published in a newspaper printed and published in said county, viz., "The Blackfoot Register," the said notice being to the effect that the aforesaid sum of money was due and owing by the plaintiff for taxes on the above-described portion of its railroad and other property for the said year, and that the said property would be sold by the said defendant, as such tax collector, between the hours of 10 o'clock a. m. and 3 o'clock p. m. of the 26th day of December, 1882, at the front door of the court-house at Malad City, in said county of Oneida, and the proceeds arising therefrom be applied in payment of the said sum of money so alleged and claimed to be due, together with costs; and plaintiff alleges that the said defendant gives out and threatens that he will sell the said property at the time and place indicated in said notice, and plaintiff avers that he will do so unless restrained and enjoined by this court; that by such a sale a cloud would be cast upon plaintiff's title to said property, thereby causing it great and irreparable injury. All of which act-
5 ings and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of this plaintiff in the premises, and it can only have adequate redress therein by the exercise of the equitable powers of this court.

Wherefore the plaintiff prays that the said defendant, whether as assessor and *ex-officio* collector of the said county of Oneida or otherwise, his counselors, att'ys, agents, employees, deputies, and servants may be restrained and enjoined by the writ of injunction, issuing out of and under the seal of this court, from selling or offering for

sale, in pursuance of said notice or otherwise, the said property of the plaintiff, or any part or portion thereof, and also from proceeding in any other manner or way to collect the said alleged tax or enforce the payment by the plaintiff of the said sum of money or any part thereof, or in any manner whatever interfering with, disturbing, or molesting the said plaintiff or its property for or on account of the said alleged tax. That upon the final hearing hereof the said injunction be made perpetual, and that the plaintiff have such other and further relief as may be equitable, together with its costs in this behalf.

WILLIAMS & YOUNG,
Att'ys for Plaintiff.

6 TERRITORY OF UTAH, }
Salt Lake County, } *ss:*

P. L. Williams, being duly sworn on his oath, says: That he is one of the attorneys for the plaintiff above named, and makes this verification for and on its behalf, and for the reason that none of the officers of said corporation are within the said county wherein affiant resides.

Affiant further says that he has read the above and foregoing complaint, and knows and understands the contents thereof, and that the same is true of his own knowledge, except as the matters which are therein stated on his own information and belief, and as to those matters he believes it to be true.

P. L. WILLIAMS.

Subscribed and sworn to before me, this 16th day of Dec., A. D. 1882.

CHRISTOPHER DIEHL,
Commissioner of Deeds for the Territory of Idaho, in the Territory of Utah.

Endorsements: Third dist. court, Idaho Territory. Utah & Northern Railway Co. *vs.* Wm. F. Fisher, coll. & etc. Complaint. Filed Dec. 27th, 1882. Wm. B. Thews, clerk dist. court.

7 *Undertaking.*

TERRITORY OF IDAHO, *County of Oneida:*

In the District Court of the Third Judicial District.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff,
vs.
WILLIAM F. FISHER, Assessor and *ex-officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Defendant.

Whereas the above-named plaintiff has commenced, or is about to commence, an action in the above-entitled court, and is about to apply for an injunction in said action against the said defendant,

enjoining and restraining him from certain acts, as in the verified complaint in the above-entitled action is more fully set forth and described:

Now, therefore, we, the undersigned, residents and freeholders in the said county of Oneida and Territory of Idaho, in consideration of the premises and of the issuing of said injunction do, jointly and severally, undertake, in the sum of two thousand ($2,000) dollars, and promise to the effect that in case said injunction shall issue the said plaintiff will pay to the said party enjoined such damages, not exceeding the sum of five hundred dollars, as such party may
8 sustain by reason of the said injunction, if the said district court finally decide that said plaintiff was not entitled thereto.

D. R. JONES.
E. J. DAVIS.

Dated Oxford, Idaho, Dec. 27th, 1882.

TERRITORY OF IDAHO, } ss:
Oneida County, }

D. R. Jones and E. J. Davis, the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself, deposes and says: That he is a resident and freeholder within the said county and territory, and is worth the sum specified in the said undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

D. R. JONES.
E. J. DAVIS.

Subscribed and sworn to before me, this 27th day of Dec., A. D.

W. B. THEWS,
Clerk of the Dist. Court,
By H. R. EVANS, *Deputy.*

Indorsements: Utah & Northern R'y Co. *vs.* William F. Fisher, col., etc. Filed Jan'y 6th, 1883. Wm. B. Thews, clerk dist. court. Approved Dec. 30th, 1882. J. T. Morgan, judge.

9 *Demurrer.*

In the District Court, Third Judicial District, Idaho Territory, in and for Oneida County, Idaho.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff,
vs.
WILLIAM F. FISHER, Assessor and ex-officio Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Defendant.

Now comes the defendant in the above-entitled action and demurs to plaintiff's complaint as follows:

First.

The complaint does not state facts sufficient to constitute a cause of action.

Second.

There is a misjoinder of parties plaintiff.

Third.

There is a misjoinder of parties defendant.

Fourth.

This court has no jurisdiction of the subject of this action.

Fifth.

That plaintiff has not legal capacity to sue.

Sixth.

That several causes of action have been improperly united.

Seventh.

10 That the complaint is ambiguous, unintelligible, and uncertain.

WILLARD CRAWFORD,
District Attorney, Oneida County, Idaho Territory.

Indorsements: Utah & Northern R'y Co. *vs.* Wm. F. Fisher, Ass., etc. Filed Jan. 23d, 1883. Wm. B. Thews, clerk, by H. R. Evans, deputy.

11 *Stipulation.*

In the District Court of the Third Judicial District of Idaho Territory, County of Oneida.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff,
vs.
WILLIAM B. FISHER, Assessor, etc., Defendant.

It is hereby stipulated by the said parties that the evidence in this cause, or the facts, as they shall be agreed to, in writing, shall be hereafter presented to the judge of said court in chambers, and the case thereupon submitted to the said judge for his decision and decree, such presentation of evidence or agreed facts, as the case may be, submission of said cause and decision thereon, to thave the same force, effect, and validity as though the same had been done in open court.

Dated June 1st, 1883.

WILLIAMS & YOUNG,
Att'ys for Pl'tff.
WILLARD CRAWFORD,
Dist. Att'y, Oneida Co., for Def't.

Indorsements: Stipulation. Utah & Northern Railway Company *vs.* Wm. F. Fisher. Filed May 31, 1883. Wm. B. Thews, clerk.

12 *Stipulation.*

In the Circuit Court of the Third Judicial District of Idaho Territory in and for the County of Oneida.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff,
vs.
WILLIAM F. FISHER, Assessor and *ex officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Defendant.

It is hereby stipulated and agreed by and between the respective counsel of the parties in the above-entitled cause that the findings of fact and conclusions of law of the court herein be filed, and the judgment and decree entered of record by the clerk of said court, under date of November the 10th, 1883, that being one of the days of the October term, A. D. 1883, and that all objections and exceptions by reason of such filing and entry be, and are hereby, expressly waived, it being the desire, intention, and understanding of the said parties that such filing and entry have the same validity, force, and effect as if the same had, in fact, been done on said day and in open court.

Dated this December 24th, A. D. 1883.

WILLIAMS & YOUNG,
Attorneys for Plaintiff.
WILLARD CRAWFORD,
Attorney for Defendant.

Indorsements: Utah & Northern R'y Co. *vs.* William F. Fisher, etc. Filed Dec. 27th, 1883. Wm. B. Thews, clerk.

13 *Answer.*

In the District Court of the Third Judicial District of Idaho Territory in and for Oneida County.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff,
against
WM. F. FISHER, Assessor and *ex-officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Defendant.

Defendant herein, answering the complaint of plaintiff herein, denies:

I. That the whole or any portion of said tract of land and territory included within the said Indian reservation is excepted out of or constitutes no part of the said Territory of Idaho and the said county of Oneida, or that neither the said Territory or county has any jurisdiction or authority to levy or collect taxes on property situated or being on said reservation; but, on the contrary, the defendant alleges that the whole of the Territory included within the said reservation is within and constitutes a part of the said Territory of Idaho and county of Oneida, and that both the said Territory and

county of Idaho has the lawful right, jurisdiction, and authority to levy and collect taxes upon all property situated and being upon said reservation, the same as if said property were situated elsewhere within the said county but outside the limits and exterior boundaries of said Indian reservation.

II. That the railroad and other property of the said defend-
14 ant described in said complaint and therein alleged to be situated upon the said reservation, or any part thereof, is not subject to taxation for any purpose under the laws of said Territory of Idaho; but, on the contrary, this defendant alleges that the whole of said property is subject and liable to taxation, for all purposes whatsoever, under the laws of the said Territory of Idaho.

III. That the said assessment of said property of the said defendant, or the levy thereon of the said tax mentioned and set forth in said complaint, was or is unlawful, or to the great or any wrong or injury of the plaintiff.

IV. That by the said sale so threatened to be made of the said property of the plaintiff by this defendant, as in said complaint alleged, any cloud would be cast upon plaintiff's property or title to said property, thereby or at all causing it great or irreparable or any injury.

V. And this defendant further denies that all or any of said acting or doings are contrary to equity or good conscience, or tend to the wrong or injury of the said plaintiff.

Wherefore said defendant prays to be hence dismissed with his cost, and all proper relief.

WILLARD CRAWFORD,
Att'y for Defendant.

Indorsements: Answer. The Utah & Northern Railway Company *against* Wm. F. Fisher, assessor & col., &c. Filed June 1st, 1883. Wm. B. Thews, clerk dist. court.

15 *Stipulation as to Facts.*

In the District Court of the Third Judicial District of Idaho Territory, County of Oneida.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff,
vs.
WILLIAM F. FISHER, Assessor & *ex-officio* Collector of Territorial and County Taxes, in and for Oneida County, Idaho Territory, Defendant.

The said parties, by their attorneys respectively, hereby stipulate and agree to the following facts, to wit:

1st. That the said plaintiff is a corporation, as stated in the complaint herein, and is the owner of and operating the said railroad.

2nd. That the defendant is the assessor and collector of taxes, as alleged in said complaint.

3rd. That there is an Indian reservation within the exterior boundaries of the said Oneida county, as stated in said complaint,

and that the same was designated and set apart as such by an executive order of the President of the United States, dated July 30th, 1869, in pursuance of the provisions of a treaty between the United States of America and the eastern band of Shoshonees and the Bannock tribe of Indians, concluded July 3d, 1868.

4th. That sixty-nine and $\frac{18}{100}$ (69 $\frac{18}{100}$) miles of the said railroad of the plaintiff, as stated and set forth in its said complaint,
16 together with all other property therein described and alleged to be used in connection with the said portion of the said railroad, are situated within the boundaries of and upon the said Indian reservation.

5th. That the said defendant, as such assessor, did assess for the year 1882 all the said portion of plaintiff's railroad and other property situated upon said reservation.

6th. That there was levied upon the said property of the plaintiff so situated upon said reservation, for the year 1882, a tax for territorial and county purposes for the said Territory of Idaho and county of Oneida, amounting in the aggregate to the sum of four thousand four hundred and seventy-eight & $\frac{42}{100}$ (84,478.42) dollars.

7th. That the defendant, as such assessor and collector, did, as alleged in said complaint, claim that the said tax was delinquent, and did also advertise the said property so situated upon said reservation as aforesaid for sale to satisfy the said tax; and further, that the said defendant did threaten, and intend to, and would have sold the said property in accordance with said advertisement, if he had not been prevented therefrom by the preliminary injunction granted by the court herein.

8th. That all other matters alleged in said complaint and not denied by the answer of the said defendant are true. And the said parties further agree that the above-entitled cause shall be submitted in the said court for its final decision and decree upon the com-
17 plaint and answer, and upon the facts hereinbefore stipulated and agreed; together with such treaties, executions, orders, statutes of the United States and Idaho Territory and the public acts as may affect the determination thereof, and that otherwise there shall not be introduced or received in said cause any evidence whatsoever.

WILLIAMS & YOUNG,
Att'ys for Plaintiff.
WILLARD CRAWFORD,
District Attorney, Oneida County, Idaho, Att'y for Defendant.

Dated June 9th, 1880.

[Endorsed:] Utah & Northern R'y Co. *vs.* William F. Fisher, assessor. Stipulation as to facts. Filed June 15th, 1883. Wm. B. Thews, clerk dist. court.

18 *Judgment.*

In the District Court of the Third Judicial District of Idaho Territory, County of Oneida.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

WILLIAM F. FISHER, Asssessor & *ex officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Defendant.

This cause having come on regularly for hearing, and having been duly submitted to the court for consideration and decision, and after due deliberation thereon, the court now files its findings and decision in writing, and orders that judgment be entered herein in favor of the said defendant, in accordance therewith:

Wherefore, by reason of the law, and the findings aforesaid, it is ordered, adjudged, and decreed, that the said plaintiff take nothing by its said complaint, that the same be, and is hereby dismissed, that the preliminary injunction heretofore granted herein, be, and the same is hereby, dissolved, and that the said defendant, William F. Fisher, as assessor and *ex officio* collector of taxes in and for Oneida county, Idaho Territory, do have, and recover of and from, the said, The Utah and Northern Railway Company, the

19 plaintiff herein, his costs and disbursements incurred in this action, amounting to the sum of ——— dollars.

Judgment rendered this 10th day of November, A. D. 1883.

JOHN T. MORGAN, *Judge, etc.*

Indorsements: Judgment and decree. Utah & Northern R'y Co. *vs.* Wm. F. Fisher, ass. &c., Filed Nov. 10th, 1883. Wm. B. Thews, clerk.

20 *Findings of Facts and Conclusions of Law.*

In the District Court of the Third Judicial District of Idaho Territory in and for Oneida County.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

WILLIAM F. FISHER, Assessor and *ex officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Defendant.

This action having come on regularly for trial, at the October term of the said court, in the year A. D. 1883; Messrs. Williams and Young appeared as counsel for the said plaintiff, and Willard Crawford, Esq., appeared as counsel for the said defendant, and the same having been duly submitted to the court, by the said counsel of the said parties respectively, for its final decision and decree upon the complaint and answer, on file herein, and upon the stipulation and agreement of the said counsel as to the facts herein, which stipulation is rendered to writing, signed by the said counsel, respect-

ively, and now on file in this cause; and the court having duly considered the same, now finds the following facts, to wit:

First.

That the said plaintiff is a corporation, as stated in the plaintiffs' complaint on file in this cause, and is the owner of and is operating the said Utah and Northern railway.

21 Second.

That the said defendant is the assessor and collector of territorial and county taxes in and for Oneida county, Idaho Territory, and was acting in that office at all the times mentioned in said complaint.

Third.

That there is within the exterior boundaries of the said Oneida county a tract of land reserved by the United States and set apart as a reservation for the Bannock Indians, the said reservation being commonly called and known as the Fort Hall Indian reservation. That said reservation was designated and set apart as such by an executive order of the President of the United States, dated July 30th, 1869, in pursuance of the provisions of a treaty between the United States of America and the eastern band of Shoshonees and the Bannock tribe of Indians, concluded July 3rd, 1868.

Fourth.

That sixty-nine and $\frac{18}{100}$ (69.18) miles of the railway of the said plaintiff, together with and including the depots, depot grounds, rolling-stock, and other property belonging to or used in connection with the said portion of the said railway, are situated within the boundaries of and upon the said Indian reservation.

Fifth.

That the said defendant, as such assessor, did assess for taxation, for the year 1882, all the said portion of plaintiff's railway and other property situated upon said reservation.

Sixth.

That there was levied upon the said property of the plain-
22 tiff so situated upon said reservation, for the year 1882, a tax for territorial and county purposes for the said Territory of Idaho and county of Oneida, amounting in the aggregate to the sum of four thousand four hundred and seventy-eight & $\frac{42}{100}$ (4,478.42) dollars.

Seventh.

That the defendant, as such assessor and collector, did, as alleged in said complaint, claims that the said tax was delinquent, and did advertise the said property so situated upon said reservation as aforesaid for sale to satisfy the said tax, and that he would have sold the same, in accordance with said advertisement, if he had not been prevented by the preliminary injunction granted by the court herein.

Conclusions of Law.

And as conclusions of law from the said facts the court finds—

First.

That the said portion of the said railway and other property of the plaintiff situated upon the said Indian reservation is, and was for the year 1882, subject to taxation under the laws of Idaho Territory for territorial and county purposes.

Second.

That the same was lawfully assessed for taxation for the year 1882, and the said tax of ($4,478.42) was duly levied and is a valid tax.

Third.

That the said defendant, as such assessor and collector of taxes, was lawfully authorized and empowered to enforce the collection of the said tax by the advertisement and sale of said property.

Fourth.

That the said plaintiff is not entitled to any relief herein.

23 And it is ordered a judgment and decree of the court be accordingly entered herein in favor of the said defendant.

JOHN T. MORGAN, *Judge, etc.*

Indorsements: Findings of facts and conclusions of law. Utah & Northern R'y Co. *vs.* Wm. F. Fisher, ass., etc. Filed Nov. 10th, 1883. Wm. B. Thews, clerk.

24 *Notice of Appeal.*

In the District Court of the Third Judicial District of Idaho Territory, County of Oneida.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

WILLIAM F. FISHER, Assessor & *ex-officio* Collector of Territorial & County Taxes in and for Oneida County, Idaho Territory, Defendant.

You will please take notice that the plaintiff in the above-entitled action hereby appeals to the supreme court of the Territory of Idaho from the judgment and decree therein entered in the said district court on the 10th day of November, A. D. 1883, in favor of the above-named defendant and against the said plaintiff.

Dated December 20th, 1883.

WILLIAMS & YOUNG,
Attorneys for Plaintiff.

To the said defendant and to Willard Crawford, Esq., his attorney.

Indorsements: Notice of appeal. Utah Northern R'y Co. *vs.* William F. Fisher, etc. Filed December 27th, 1883. Wm. B. Thews.

25 *Undertaking for Costs and Damages on Appeal.*

In the District Court of the Third Judicial District of Idaho Territory, Oneida County.

THE UTAH AND NORTHERN RAILWAY COMPANY, Plaintiff,

vs.

WILLIAM F. FISHER, Assessor & *ex-officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Defendant.

Whereas the plaintiff in the above-entitled action is about to appeal to the supreme court of the Territory of Idaho from a judgment rendered against it in said action in the said district court and in favor of the defendant dismissing plaintiff's complaint, and for costs, and entered on the tenth day of November, A. D. 1883:

Now, therefore, in consideration of the premises, and of such an appeal, we the undersigned, residents of the county of Oneida and Territory of Idaho, do hereby jointly and severally undertake and promise, on the part of the appellant, that the said appellant will pay all damage and cost which he may awarded against it on the appeal, or on a dismissal thereof, not exceeding three hundred ($300.00) dollars, to which amount we acknowledge ourselves jointly and severally bound.

Witness our hands and seals, this 20th day of December, A. D. 1883.

JOHN T. HARRIS. [SEAL.]
A. M. BOICE. [SEAL.]

26 TERRITORY OF IDAHO, } ss:
County of Oneida, }

John Harris and A. M. Boice, the persons named in and who subscribed the foregoing undertaking as the sureties thereto, being severally duly sworn, each for himself, says: That he is worth the amount specified in said undertaking as the penalty thereof over and above all his just debts and liabilities, exclusive of property exempt from execution, and that he is a resident and freeholder within the Territory of Idaho.

JOHN F. HARRIS.
A. M. BOICE.

Subscribed and sworn to before me, this 20th day of December, A. D. 1883.

A. F. CALDWELL,
Justice of the Peace.

Indorsements: Undertaking on appeal. Utah and Northern R'y Co. *vs.* William F. Fisher, &c. Filed Dec. 27th, 1883. Wm. B. Thews.

27 TERRITORY OF IDAHO, } ss:
County of Oneida, }

I, Wm. B. Thews, clerk of the district court of the 3rd judicial

district of Idaho Territory, do hereby certify that the above and foregoing transcript is a full, true, and correct copy of the original papers, in the case of the Utah and Northern Railway Company *vs.* William F. Fisher, assessor and *ex officio* collector of territorial and county taxes, in and for Oneida county, Idaho Territory, viz: Complaint, undertaking, demurrer, stipulation, answer, stipulation as to facts, judgment, findings of facts, and conclusions of law, notice of appeal, and undertaking for costs and damages on appeal, as the same remains on the files in my office at Malad City.

Witness my hand and the seal of the district court, this 29th day of December, A. D. 1883.

[SEAL.] WM. B. THEWS,
Clerk of the District Court of the 3rd Judicial Dist. of Idaho Territory.

28 *Waiver of Oral Argument.*

In the Supreme Court of Idaho Territory.

THE UTAH AND NORTHERN RAILWAY COMPANY, Appellant,
vs.
WILLIAM F. FISHER, Assessor, &c., Respondent.

The above-named appellant hereby expressly waives the right and privilege to be heard by counsel orally, in the argument of the above case, and hereby submits the same for consideration and decision, upon the written brief herewith filed.

Jan. 21st, 1884.

WILLIAMS & YOUNG,
Attorneys for Appellant.

Endorsed: Supreme court, Idaho Territory. Utah and Northern R'y Co. *vs.* Wm. F. Fisher, Assessor. Waiver of oral argument by appellant. Filed Jan. 23d, 1884. A. L. Richardson, clerk.

29 *Stipulation.*

In the Supreme Court of the Territory of Idaho.

THE UTAH NORTHERN RAILWAY COMPANY, Appellant,
vs.
WILLIAM F. FISHER, Assessor and *ex-officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Respondent.

It is hereby stipulated by and between the undersigned, the counsel of the above parties, respectively, that the above case be placed upon the calendar for the regular term of the said court, held in January, A. D. 1884, and that the same be submitted during the said term of the said court for its consideration and decision, such submission to be upon the written briefs of the said parties that may be filed herein,

the said parties, respectively, however, reserving the right to appear in said court and, with the consent of the court, argue the same orally. Such oral argument must, however, if made at all, shall be made at the time the case is regularly reached for argument upon the call of the calendar, it being the intention and desire of the said parties that the said cause be submitted for decision and decided by the court during the said term thereof.

January 21st, 1884.

WILLIAMS & YOUNG,
Attorneys for Appellant.
WILLARD CRAWFORD,
Attorney for Respondent.

Endorsed: Supreme court Idaho Territory. Utah & North. R'y Co. *vs.* Wm. F. Fisher, assessor. Stipulation. Filed Jan. 28th, 1884. A. L. Richardson, clerk.

Assignment of Errors.

In the Supreme Court of Idaho Territory. January Term, 1884.

THE UTAH AND NORTHERN RAILWAY COMPANY, Appellant,
vs.
WILLIAM F. FISHER, Assessor and *ex officio* Collector of Territorial and County taxes, in and for Oneida County, Idaho Territory, Respondent.

The said Utah and Northern Railway Company, the appellant above named, by Williams & Young, its attorneys, comes now and specifies and assigns the following error of the district court of the third judicial district of Idaho Territory, in and for the county of Oneida, in the above-entitled case, upon which it will rely at the argument, viz:

1st. The said court erred in each and every of its findings and and conclusions of law, and numbered respectively "first," "second," "third," and "fourth."

2nd. The court erred in rendering and entering its final judgment and decree that the said appellant take nothing by its said action and complaint, and that said complaint be dismissed.

WILLIAMS & YOUNG,
Attorneys for Appellant.

(Endorsed:) Supreme court, Idaho Territory. January term, 1884. The Utah & North. R'y Co. *vs.* Wm. F. Fisher, assessor, &c. Assignment of Error. Copy received this — day of January, 1884. Willard Crawford, att'y for resp't. Filed Jan. 28th, 1884. A. L. Richardson, clerk. Williams & Young, att'ys for appellant.

33 *Record Entries Supreme Court.*

In the Supreme Court of Idaho Territory. January Term, A. D. 1884.

MONDAY, *January 28th*, 1884.

THE UTAH & NORTHERN RAILWAY COMPANY, Appellant,
vs.
WM. F. FISHER, Assessor and *ex-officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Respondent. } Civil. No. 16.

Ordered that this cause be placed upon the calendar in accordance with stipulation on file.

TUESDAY, *January 29th*, 1884.

THE UTAH & NORTHERN RAILWAY COMPANY, Appellant,
vs.
WM. F. FISHER, &c., Respondent. } Civil. No. 16.

This cause was this day submitted to the court without argument upon briefs filed.

34 On Appeal from the District Court of the Third Judicial District in and for Oneida County.

SATURDAY, *February 16th*, 1884.

THE UTAH & NORTHERN RAILWAY COMPANY, Appellant,
v.
WILLIAM F. FISHER, Assessor and *ex-officio* Collector of Territorial and County Taxes in and for Oneida County, Respondent.

And now at this day this cause being called, and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by Associate Justice Prickett, to the effect that the judgment of the court below be affirmed.

Whereupon it is now considered, ordered, adjudged, and decreed by the court here that the judgment of the district court of the third judicial district in and for the said county of Oneida in the above-entitled cause be, and the same is hereby, affirmed.

35 THE UTAH & NORTHERN RAILWAY COMPANY, Appellant,
vs.
WILLIAM F. FISHER, Assessor and *ex-officio* Collector of Territorial and County Taxes in and for Oneida County, Respondent.

On this 16th day of February, A. D. 1884, being one of the days of the January term, 1884, came the said appellant, The Utah and Northern Railway Company, by its counsel herein, and prays the allowance of an appeal in this cause to the Supreme Court of the

United States, and that the amount of the bond to be given on such appeal be fixed by the court, and counsel herein for the said respondent having filed with the clerk of the court in this cause his written waiver of service upon the said respondent or his said counsel of a citation or other notice of the said appeal, and having also assented in writing that the bond on said appeal be fixed at five hundred dollars, it is ordered by the court that the appeal so prayed be, and the same is hereby, granted and allowed, and the amount of the bond thereon be and is fixed at five hundred dollars, the same to be approved by one of the justices of this court.

36 *Opinion. Filed Feb. 16th*, 1884.

Supreme Court Idaho Territory.

THE UTAH & NORTHERN RAILWAY COMPANY, Plaintiff and Appellant,

vs.

WILLIAM F. FISHER, Assessor and *ex-officio* Tax Collector of Oneida County, Idaho Territory, Defendant and Respondent.

None of the lands embraced within the boundaries of Idaho Territory are excepted out of said Territory by the provisions of sec. one of the organic act except such as, by the provisions of pre-existing treaties with Indian tribes, were not, without the consent of such Indian tribes, to be included within the limits of any State or Territory.

At the time of the passage of the organic act of Idaho Territory no treaty existed between the United States and any Indian tribe providing that the lands embraced within the Fort Hall Indian reservation should not, without the consent of such tribe, be included within any State or Territory; such lands, therefore, became part of Idaho Territory upon the passage of said organic act, March 3rd, 1863, and have not since been withdrawn from or excepted out of said Territory.

The Fort Hall Indian reservation being a part of and included within Idaho Territory and Oneida county, the property of the Utah and Northern Railway Company situated thereon is subject to taxation for territorial and county purposes.

Appeal from the District Court, Oneida County.

Williams & Young, for appellant.

37 Willard Crawford, for respondent.

PRICKETT, J.:

This appeal has been submitted upon briefs, without oral argument.

The facts, as shown by the record, are, that the Utah and Northern Railway Company is a corporation owning and operating the Utah & Northern railway, extending into and through the county of Oneida, in this Territory; that sixty-nine and $\frac{18}{100}$ miles of said railway is within and upon the Fort Hall Indian reservation, a

tract of land situated within the exterior boundaries of said Oneida county, but which, by an order of the President of the United States, dated July 30th, 1869, in pursuance of a treaty with the eastern band of Shoshonees and the Bannock tribe of Indians, concluded July 3rd, 1868, was set apart as a reservation for the Bannock Indians; that the respondent, being the assessor and *ex-officio* tax collector of said Oneida county for the year 1882, assessed plaintiff's railroad and other property situated upon said reservation; that there was levied upon the railroad and property situated upon the reservation, for the year 1882, a tax for territorial and county purposes of four thousand four hundred and seventy eight and $\frac{47}{100}$ dollars; that such tax not having been paid within the time required law, the defendant, as tax collector, was proceeding to enforce and collect the same, under the laws of the Territory, by advertisement and sale of the property, when the plaintiff commenced this action to enjoin and restrain him therefrom. A temporary injunction was issued,
38 which at the trial was, by the judgment of the court, dissolved and set aside, and the defendant also recovered judgment for costs. From that judgment the plaintiff appealed to this court.

The sole question presented for the consideration and decision of this court is, whether or not the Fort Hall Indian reservation is a part of Idaho Territory, and of Oneida county.

The act of Congress organizing the Territory of Idaho, approved March 3rd, 1863, 12th U. S. Stat., 808, includes within its exterior lines the tract of land now known as the Fort Hall Indian reservation, and by the act of the Legislative Assembly of this Territory creating and defining the boundaries of Oneida county, it is included within the exterior boundaries of that county; but section one of the organic act of the Territory contains a proviso as follows: That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory so long as such rights shall remain unextinguished by treaty with the United States and such Indians, or to include any territory which by treaty any Indian tribes is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Idaho until such tribe shall signify their assent to the President of the United States to be included within said Territory; or to affect the
39 authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the Government to make if this act had never passed.

No provision similar to the foregoing is to be found in any act of Congress creating a territory prior to that organizing the Territories of Nebraska and Kansas (10 U. S. Stat., 277), and the reason for it in that act was that before the organization of those territories the United States, by treaty with the Shawnee tribe of Indians, and, perhaps, other tribes occupying lands embraced in those territories,

had agreed not, without their consent, to include any of their lands within any State or Territory thereafter to be formed; and for the same reason Congress required a like provision to be incorporated into the constitutions of Kansas and Nebraska before admitting them into the Union. The form of the organic act of those territories, in this respect, seems to have been uniformly followed by Congress in organizing the other territories created since that time, without reference to the question whether such proviso was needed to save and protect any rights previously guaranteed or not. It is not claimed that prior to the passage of the organic act of Idaho any treaty existed containing provisions similar to those in the treaty with the Shawnees which would exclude or except out of the territory any portion of the lands embraced within the Fort Hall Indian reservation. Such lands were therefore included with the territory March 3rd, 1863, by the terms of the organic act.

40 The proviso in the act creating the Territories of Kansas and Nebraska, similar to that found in section one of our organic act, above set forth, was several times considered and construed by the courts in Kansas. In the case of McCracken *vs.* Todd, (1 Kansas Rep., 148,) taken by writ of error to the supreme court of Kansas, one of the questions presented was whether certain judicial proceedings which took place on the lands belonging to the Delaware Indians when Kansas Territory was organized were not transacted without the Territory, and therefore null and void. That court, after reciting the proviso, say: "This ground of objection calls for no comment by the court further than a statement that nowhere in any treaty with the Delaware Indians is there a provision that the lands of that tribe shall not, without its consent, be included withing the territorial limits of any State or Territory. All the lands of that tribe within the boundaries specifiically described in the law referred to were therefore included within the limits of the Territory."

In the case of the United States *vs.* Todd the circuit court of the United States for Kansas, Miller, J., presiding, held that the State court, and not that of the United States, had jurisdiction to try and punish for the crime of murder committed upon the Kansas reservation, because the treaty with the Kansas Indians contained no provision excepting their reservation from the territorial limits or jurisdiction of any State or Territory. (McCahon's Rep., 198.)

41 The lands embraced within the Fort Hall Indian reservation having been included within and made a part of the Territory, by section one of our organic act, passed March 3d, 1863, we will next inquire whether those lands have since been withdrawn therefrom. If so, it must be because of some provision in the treaty between the United States and the eastern band of Shoshonees and the Bannock tribe of Indians, concluded July 3rd, 1868, and of the executive order made in pursuance thereof (15 Stat., 673), for it is by and under these that the Bannock tribe of Indians occupy said reservation, section 2 of that treaty provides as follows: "It is agreed that whenever the Bannocks desire a reservation to be set apart for their use, or whenever the President of the United

States shall deem it advisable for them to be put upon a reservation, he shall cause a suitable one to be selected for them, in their present country, which shall embrace reasonable portions of the Port Neuf and Kansas (meaning Camas), Prairie countries, and that, when this reservation is declared, the United States will secure to the Bannocks the same rights and privileges therein, and make the same and like expenditures therein for their benefit, except the agency house and residence of agent, in proportion to their numbers as herein provided for the Shoshonee reservation." On the 30th day of July, 1869, in pursuance of this treaty the President, by order of that date, set apart the Fort Hall Indian reservation, for the use and occupation of the Bannocks, but there is nothing in this treaty or order from which to imply that such tract of land was with-
42 drawn from, or taken out of the Territory of Idaho. It was set apart merely for the use and occupation of the Bannock tribe of Indians.

The appellant relies for the reversal of the judgment in this case upon the decision of the Supreme Court of the United States in Hyde *vs.* Harkness, 98th U.S., 8th Otto, 476. That court there held that the Territory embraced within the Fort Hall Indian reservation was "as much beyond the jurisdiction, legislative or judicial, of the government of Idaho, as if it had been set apart within the limits of another country or of a foreign State," which would certainly be conclusive in favor of the position assumed by the appellant, but for the decision of the same court, upon the question, subsequently rendered in the case of Langford *vs.* Monteith (102 U. S., 12 Otto, 145), which is relied upon by counsel for respondent. In the last case cited, Mr. Justice Miller, delivering the opinion of the court, says: "The act of Congress of March 3rd, 1863, to provide a tempory government for the Territory of Idaho, 12 Stat., 808, contains a clause precisely similar to that admitting Kansas into the Union. This court in Harkness *vs.* Hyde, relying upon an imperfect extract found in the brief of counsel, inadvertantly inferred that the treaty with the Shoshonees like that with the Shawnees, contains a clause excluding the lands of tribe from territorial or State jurisdiction. In this it seems we were laboring under a mistake. Where no such clause or language equivalent to it is found in a treaty with Indians within the exterior limits of Idaho, the lands held by them
43 are a part of the Territory, and subject to its jurisdiction, so that process may run there; however, the Indians themselves may be exempt from that jurisdiction." The decision in the case of Harkness *vs.* Hyde is therefore no longer authority upon the point made in the appellant's brief.

Our conclusion is that the railroad and property of the appellant is subject to taxation, notwithstanding its location and situation upon the Fort Hall Indian reservation.

The judgment of the district court is affirmed. Morgan, Ch. J., and Buck, J., concurred.

Endorsed: Filed Feb. 16th, 1884. A. L. Richardson, clerk.

44 *Waiver of Service of Citation.*

In the Supreme Court of the Territory of Idaho. January Term, A. D. 1884.

THE UTAH AND NORTHERN RAILWAY COMPANY, Appellant,
vs.
WILLIAM F. FISHER, Assessor and *ex-officio* Collector of Territorial and County Taxes in and for Oneida County, Idaho Territory, Respondent.

And now comes the said respondent by the undersigned, his attorney herein, and hereby waives service of a citation or other notice of any appeal that may be taken from the decision and decree of this court herein to the Supreme Court of the United States, and consents that the bond on such appeal be fixed in the sum of five hundred dollars.

WILLARD CRAWFORD,
Attorney for Respondent.

(Endorsed:) Filed February 11th, 1884. A. L. Richardson, clerk.

45 *Bond on Appeal to Supreme Court U. S.*

Know all men by these presents, that we, the undersigned, residents of Oneida county, Idaho Territory, are held and firmly bound unto William F. Fisher, assessor and *ex-officio* collector of territorial and county taxes in and for said county, in the full and just sum of five hundred ($500) dollars, to be paid to the said William F. Fisher, assessor as aforesaid, or his certain attorney, executors, administrators, assigns, or successor in said office; to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 23rd day of February, A. D. 1884.

Whereas lately at a term of the supreme court of the said Territory of Idaho, in a suit therein pending on appeal from the district court of the third judicial district of said Territory in and for the said county of Oneida, wherein the Utah and Northern Railway Company, a corporation, was appellant, and the said William F. Fisher, as assessor as aforesaid, was respondent, a decree and judgment against the said Utah and Northern Railway Company,
46 made and entered in said district court, with costs taxed at $——, was affirmed by said Supreme Court, with costs taxed at $——, and the said Utah and Northern Railway Company having appealed from the said decree of affirmance to the Supreme Court of the United States, and its appeal having been allowed by the said supreme court of said Territory:

Now, the condition of the above obligation is such that if the said Utah and Northern Railway Company shall prosecute its said appeal to effect and answer all damages and costs if it fail to make its

plea good, then the above obligation to be void; but otherwise to remain in full force and virtue.

JACOB W. KEENEY. [SEAL.]
L. HOLBROOK. [SEAL.]

TERRITORY OF IDAHO, } ss:
Oneida County, }

Jacob W. Keeney and L. Holbrook, of said county, being severally duly sworn, each for himself, deposes and says: I am a resident and freeholder in said county, and am worth the sum mentioned in the foregoing bond as the penalty thereof, over and above all my just debts and liabilities, exclusive of property exempt from execution.

JACOB W. KEENEY.
L. HOLBROOK.

47 Subscribed and sworn to before me, this 26th day of February, A. D. 1884.

GEO. H. STOVER,
Justice of the Peace.

The above and foregoing bond, after the same was duly executed, was presented to me for approval, and is by me approved, this first day of March, A. D. 1884.

JOHN T. MORGAN,
Chief Justice of the Supreme Court, Idaho Territory.

(Endorsed:) In the supreme court, Idaho Territory. Utah & Northern R'y Co. *vs.* Wm. F. Fisher, assessor. Bond on appeal to Supreme Court U. S. Filed March 5th, 1884. A. L. Richardson, clerk.

48 UNITED STATES OF AMERICA, } ss:
Territory of Idaho, }

I, A. L. Richardson, clerk of the supreme court of Idaho Territory, hereby certify that the foregoing contains a true copy of the record and proceedings in the case of the Utah and Northern Railway Company, appellant, against William F. Fisher, assessor and *ex-officio* collector of territorial and county taxes in and for Oneida county, Idaho Territory, respondent, lately decided in said court, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Boise City, in said Territory, this 8th day of March, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] A. L. RICHARDSON, *Clerk.*

[Endorsed on cover:] Idaho Territory supreme court. No. 900. The Utah & Northern Railway Company, appellant, *vs.* William F. Fisher, assessor and *ex-officio* collector of territorial and county taxes in and for Oneida county, Idaho Territory. Filed 20th August, 1884.

116-28

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1884.

No. 900.

THE UTAH AND NORTHERN RAILWAY COMPANY, APPELLANT,

vs.

W. F. FISHER, ASSESSOR OF ONEIDA COUNTY, IDAHO, APPELLEE.

Motion to advance the Cause and set it for hearing.

Comes now the appellee, by H. W. Smith, his attorney, and moves the court to advance the above-entitled cause upon the docket, and set the same down for hearing at the earliest practicable day in the October term, 1885, that will suit the convenience of the court, and assigns the following reasons for said motion:

1st.

Said action is brought to enjoin the collection of all county and Territorial taxes upon appellant's line of railway, with its equipment, situated in and upon the Fort Hall Indian

reservation, and the decision in this case determines the right and power of the county and Territory to tax any property upon said reservation. That there are several million dollars worth of property belonging to white persons on said reservation.

24.

That an early determination of this matter is necessary in order to the proper government of said County and Territory; for it is impossible to properly fix the rate of taxation upon property until it is ascertained what property is subject to taxation.

H. W. SMITH.
Counsel for Appellee.

SUPREME COURT OF THE UNITED

OCTOBER TERM, 1895. No. 654.

UTAH AND NORTHERN RAILWAY COMPANY,

Appellant,

vs.

WILLIAM F. FISHER, Assessor and Ex-officio Collector of Taxes, for Oneida County, Idaho,

Appellee.

BRIEF FOR APPELLANT.

JOHN F. DILLON,

A. J. POPPLETON,

C. G. Bloedtner "Quick" Print, 120-122 Chestnut St., St. L.

Supreme Court of the United States.

UTAH & NORTHERN RAILWAY COMPANY,
Appellant,

AGAINST

WILLIAM F. FISHER, Assessor and ex-officio Collector of Taxes for Oneida County, Idaho,
Appellee.

Appeal from the Supreme Court of the Territory of Idaho.

BRIEF FOR APPELLANT.

By JOHN F. DILLON and A. J. POPPLETON.

Statement.

THIS IS AN APPEAL *from the Supreme Court of Idaho.* Of the Utah & Northern Railway, sixty-nine and eighteen-hundredths miles are situated on the Fort Hall Indian Reservation. This reservation is within the exterior boundaries of Idaho and within the County of Oneida.

For the year 1882, the assessor of that county assessed that portion of the road and appurtenant

property situated on the Indian reservation, for territorial and county taxation; and the county authorities levied thereon taxes to the amount of four thousand four hundred and seventy-eight and forty-two hundredths ($4,478.42) dollars.

On proceedings to enforce this tax, a temporary injunction was issued by the District Court in a suit brought by the Railway Company against the Tax Collector, restraining the collection of the tax. On the final hearing, this injunction was dissolved and judgment rendered for the defendant. An appeal was taken to the Supreme Court of Idaho. That Court having affirmed the decision of the District Court, appeal is now taken to this Court.

Argument.

No question is made by the appellant in respect to validity of the taxes except one, namely: *That the property taxed being situated within the limits of the Indian Reservation, is not subject to the jurisdiction of the Territory of Idaho for the purposes of taxation; and, therefore, the tax is not one authorized by law and is void.*

It might seem that the question is already settled by this Court. In the case of Harkness vs. Hyde, 98 U. S., 476, this Court held that the Fort Hall Indian Reservation was not within the jurisdiction of the Territory of Idaho, and that processes from its courts cannot be served within the limits of that reservation. In the later case of Langford vs. Monteith, 102 U. S., 145, that judgment was overruled; the Court stating that the former case had been decided under a misappre-

hension of the terms of the treaty by virtue and authority of which the reservation was established. At the same time, the Court adhered to the principle announced in Harkness vs. Hyde (102 U. S., 146), which is stated thus:

"The principle announced in that case is sound, "namely, that when, by the act of Congress organizing "a Territorial government, lands are excepted out of "the jurisdiction of the government thus brought into "existence, they constitute no part of such Territory, "although they are included within its boundaries. "Congress, from which the power to exercise the "new jurisdiction emanates, has undoubted authority "to exclude therefrom any part of the soil of the "United States, or of that whereto the Indians have "the possessory title, when, by our solemn treaties "with them, a stipulation to that effect has been "made" (102 U. S., 146).

It is respectfully submitted that the application of this principle excludes the Fort Hall Reservation from the jurisdiction of the Territory of Idaho. We beg, therefore, to call the attention of the Court to some considerations not referred to in Langford vs. Monteith, and possibly overlooked by the Court, which seem important, and to require a modification of that case in its application to the taxation case at bar.

The provisions of the statutes and treaty bearing on the question are as follows:

12 Statutes at Large, 809, Boundaries of Idaho:

"Provided, further, that nothing in this act con- "tained shall be construed to impair the rights of per- "son or property now pertaining to the Indians in "said Territory, so long as such rights shall remain "unextinguished by treaty between the United States "and such Indians, or to include any territory which, "by treaty with any Indian tribes, is not, without the "consent of said tribe, to be included within the terri-

" torial limits or jurisdiction of any State or Territory,
" but all such territory shall be excepted out of the
" boundaries and constitute no part of the Territory of
" Idaho until said tribe shall signify their assent to the
" President of the United States to be included within
" such territory, or to affect the authority of the Gov-
" ernment of the United States to make any regula-
" tions respecting such Indians, their lands, property
" or other rights, by treaty, law or otherwise, which it
" would have been competent for the Government to
" make if this act had never passed."

15 Statutes at Large 673, Shoshone treaty, July 3d, 1868:

" If bad men among the whites or among other peo-
" ple, subject to the authority of the United States,
" shall commit any wrong upon the person or property
" of the Indians, the United States will, upon proof
" made to the agent and forwarded to the Commis-
" sioner of Indian Affairs at Washington City, proceed
" at once to cause the offender to be arrested and pun-
" ished according to the laws of the United States, and
" also reimburse the injured person for the loss sus-
" tained."

"If bad men among the Indians shall commit a
" wrong or depredation upon the person or property of
" any one, white, black or Indian, subject to the author-
" ity of the United States, and at peace therewith, the
" Indians herein named solemnly agree that they will,
" on proof to their agent, and notice by him, deliver up
" the wrongdoer to the United States, to be tried and
" punished according to its laws" (Article XI., page 676). " No treaty for the cession of any portion of the
" reservation herein described which may be held in
" common, shall be of any force or validity as against
" the said Indians, unless executed and signed by at
" least a majority of all the adult male Indians occu-
" pying or interested in the same; and no cession by
" the tribe shall be understood or construed in such
" manner as to deprive without his consent any indi-
" vidual member of the tribe of his right to any tract
" of land selected by him, as provided in Article 4 of
" this treaty."

For the purpose of excluding an Indian Reservation from the limits, and therefore from the jurisdiction of the Territory of Idaho, a treaty is equally effective with an Act of Congress. In *ex parte* Crow Dog, 109 U. S., 567, the Court say:

" That this legislation could constitutionally be ex-
" tended to embrace Indians in the Indian country by
" the mere force of a treaty, whenever it operates of it-
" self without the aid of any legislative provision, was
" decided by this Court in the following cases: United
" States vs. 43 Gallons of Whisky, 93 U. S., 188; Hol-
" den vs. Joy, 17 Wallace, 211; Cherokee Tobacco, 11
" Wallace, 616."

While it must be conceded that the Fort Hall Reservation is not excluded from the limits of Idaho in the identical language used in respect to the Cheyenne Reservation in Kansas (7 Statutes at Large, 755), it is submitted that the treaty with the Shoshones establishing the Fort Hall Reservation accomplishes the same result. That treaty, among other things, designed for the protection and ultimate civilization of the tribes, provides:

> 1st. That in case wrongs are committed upon Indians, the United States shall cause the offender to be arrested and punished according to the laws of the United States.
>
> 2d. That said reservation is set apart for the absolute and undisturbed use and occupation of the Shoshone Indians herein named; and for such other friendly tribes or individual Indians as from time to time may be willing, with the consent of the United States, to be admitted among them. And the United States agrees that no persons ex-

cept those herein designated and so described, and except such officers, agents and employees of the Government as may be authorized to enter upon the Indian Reservation in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article.

3d. That no treaty for the cession of any portion of the reservation shall be of any force or validity unless executed and signed by a majority of the Indians; and no cession made by the tribe shall be held to deprive any individual member of his right to any land selected by him.

How is it possible to maintain the stipulations of this treaty if the territorial laws are in full force in respect to it? All persons, except such as the United States designate, with the consent of the Indians, are forbidden to pass over, settle upon, or reside in the reservation. Persons offending are to be punished by the United States, and according to its laws, and no cession of the lands of the tribe can be made without the consent of the Indians. Here, then, is a treaty whose provisions, having the force and effect of a law of Congress, excludes, in spirit and substance, these lands from the general jurisdiction of the territory as effectually as if done in specific language.

The enabling act of Idaho, passed and approved in March, 1863, so far as it is in conflict with the treaty, is abrogated; for the latter has all the force of an act of Congress subsequently passed, and repeals this enabling act where it is in contravention of the treaty.

This seems to have been the view taken by the Court in U. S. vs. Berry, 4 Federal Reporter, 788, wherein it was held that similar provisions of a treaty with the Utes, operated to give the Federal Government exclusive jurisdiction over the Ute Reservation, and that the subsequent act of Congress admitting Colorado as a State, while containing no exception in favor of the Ute Reservation, left the exclusive jurisdiction of the United States in full force upon the Ute Reservation, and excluded that of the State.

The Court, McCRARY, J., says:

"But without resting upon this proposition, let us " inquire whether the enabling act upon its face ought " to be construed as repealing the treaty of March 2d, " 1868, and as therefore depriving the United States " of the power of fulfilling the solemn obligations im- " posed upon them by said treaty. Among the pro- " visions of said treaty is one which declares that the " United States 'now solemnly agrees that no persons, " except those herein authorized so to do, and except " such officers, agents and employees of the Govern- " ment as may be authorized to enter upon said Indian " Reservation in discharge of duties enjoined by law, " shall ever be permitted to pass over, settle upon, or " reside in the territory described in this article, ex- " cept as herein otherwise provided.'

" Another provision of the treaty declares that 'if " bad men among the whites or among the people sub- " ject to the authority of the United States, shall " commit any wrong upon the person or property of " the Indians the United States will, upon proof made " to the agent, and forwarded to the Commissioner of " Indian Affairs at Washington City, proceed at once " to cause the offender to be arrested and punished ac- " cording to the laws of the United States, and also " reimburse the injured person for the loss sustained.'

" The same article further provides for the punish- " ment, according to the laws of the United States, of " any person among the Indians who shall commit a " wrong or depredation upon the person or property " of any one, white or black, or Indian, subject to the

" authority of the United States, and at peace there-
" with.

" Another provision declares that Congress shall pro-
" vide for protecting the rights of Indian settlers in
" their improvements, and may fix the character of the
" title held by each. And still another declares that
" the United States may pass such laws on the subject
" of alienation and descent of property and on subjects
" connected with the government of the Indians on said
" reservation and the internal police thereof as may be
" thought proper. All these and many other provisions
" of the treaty necessarily require for their enforcement
" that the reservation shall remain under the sole and
" exclusive jurisdiction of the United States. Indeed,
" to hold that the jurisdiction of the United States
" over said reservation is superseded by that of the
" State would be to render nugatory nearly every pro-
" vision of the treaty. When we remember that the
" policy of keeping the Indian reservations within the
" exclusive jurisdiction of the National Government
" until such time as the rights of the Indians therein
" are extinguished by treaty has been uniformly pur-
" sued with respect to all Indian reservations in the
" country, and is expressed so plainly in the provisions
" of the treaty above named; it is impossible to sup-
" pose that it was the intention of Congress by the
" organization of the State of Colorado, to annihilate
" the treaty, and to deprive the Indians of their right
" to protection under it. Where a district of country
" has been by competent authority set apart as an
" Indian reservation, and by treaty stipulations the
" United States have assumed exclusive jurisdiction
" over it, such district remains an Indian reservation,
" and the federal jurisdiction over it continues until it
" is changed by acts of Congress, or by treaty, or until
" the Indian title is extinguished, and this notwith-
" standing it may be embraced within the limits of a
" State. (Bates vs. Clark, 95 U. S., 204.) The treaty
" by its terms was to be permanent, and the rights con-
" ferred thereby were not to be taken away without the
" consent of the Indians. It may be conceded that it
" is within the power of Congress to repeal it, but it is
" clear to my mind that such repeal can only be enacted
" in express terms, or by such language as imports a
" clear purpose on the part of Congress to effect that
" end.

"To hold the treaty abrogated by the subsequent "legislation would be to assume that Congress in- "tended to depart in this instance altogether from the "policy of treating the Indians as wards of the nation, "of keeping them and the lands set apart for their "use and occupation within the sole jurisdiction of "the United States, and that it intended to turn this "particular tribe, with its reservation, over to the "jurisdiction and control of the State of Colorado, "stripped of its treaty rights, and deprived of the "powerful protection of the National Government. "Such a purpose ought to have been very clearly ex- "pressed.

"If it be said that the State may have jurisdiction "within the limits of the reservation, for the purpose "of enforcing its criminal laws, without interfering "with the rights of the Indians under the treaty, the "answer is that one of the obligations imposed upon "the United States by the plain terms of the treaty "is to enforce their own criminal laws against all "classes of offenders within the bounds of the reserva- "tion. Furthermore, it is manifest that if the enab- "ling act repeals the treaty for one purpose, it repeals "it for all purposes. If the State has jurisdiction over "any part of the territory and people of the reservation, "for the purpose of enforcing its criminal laws, it has "jurisdiction over the whole of the territory, and over "all the people, whether whites, blacks or Indians. If "the jurisdiction now claimed by the State be conced- "ed, then it follows that the State may not only en- "force such criminal laws as now exist on its statute "books as against all persons residing or found upon "the resevation, but it may enact other laws if it so "wills, in direct conflict with the rights guaranteed to "the Indians by treaty, as well as destructive of the "policy of Congress with respect to that people.

"This is precisely what the State of Georgia attempted "to do in 1829, with respect to the reservation of the "Cherokee nation, which was within the limits of that "State. But the Supreme Court of the United States "held in the case of Worcester vs. The State of Geor- "gia, *supra*, that the State legislation was void be- "cause in conflict with a treaty with the Cherokee In- "dians, which was held to be the supreme law of the "land. In that celebrated case Chief Justice MARSHALL "said: 'The Constitution, by declaring treaties already

"made, as well as those to be made, to be the supreme "law of the land, has adopted and sanctioned the pre- "vious treaties with the Indian nations, and conse- "quently admits their rank among those powers who "are capable of making treaties. The words "treaty" "and "nation" are words of our own language, selected "in our diplomatic and legislative proceedings, by "ourselves, having each a definite and well-understood "meaning. We have applied them to Indians as we "have applied them to the other nations of the earth. "They are applied to all in the same sense.'"

THE PRINCIPLE OF THAT CASE applied to the present will exempt the property of the appellant from taxation. It is impossible for the Territory of Idaho to assume and exercise jurisdiction over this Indian Reservation for the purpose of administering the laws passed by its Legislature in respect to civil administration and revenue, without a breach of these treaty provisions. Inasmuch as the legislative power of the Territory is derived from Congress alone, its legislative acts cannot be interposed against a treaty which is the supreme law of the land in the same sense and to the same extent as an act of Congress. If the reservation is subject to the jurisdiction of the territorial Legislature, the treaty is cancelled so far as the Legislature chooses to nullify it. By what authority will the county authorities of Oneida County enter upon the reservation to make surveys, establish roads, build bridges, erect schools, appraise and value property, assess and levy taxes? The railway itself occupies the reservation not under territorial authority, but by virtue of a contract assented to by both the United States and the Indian tribes, and given legal effect by an act of Congress. Act July 3d, 1882, Statutes at Large 22, page 150:

"It could not have been authorized to enter upon "the reservation by the territorial or county authories. "What it had no power to grant or create, what it could "not protect or regulate, what it is prohibited from en- "tering upon or passing over by the express words of a "treaty, it proposes to tax. Taxation implies protec- "tion and power to protect. It is absurd to say that "the power to tax exists in the face of a treaty pro- "hibiting even the personal presence of territorial and "county officers upon the territory in which is sit- "uated the property sought to be taxed."

The only basis for territorial taxation is that the taxes levied and collected shall be applied for building roads and bridges, the support of schools, paupers, the administration of local justice, &c. Since the taxes in question cannot be so used, the power to levy and collect them, does not, of course exist.

For the foregoing reasons we submit and urge that the case of Langford vs. Monteith, and of *ex parte* Crow Dog, 109 U. S., 556, do not apply to, or conclude this case, and that the judgment below ought to be reversed.

JOHN F. DILLON and
A. J. POPPLETON,
For the Appellant.

Oct. 17, '85.

116-28

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

UTAH AND NORTHERN RAILWAY CO.

vs.

WILLIAM F. FISHER, ASSESSOR AND EX-OFFICIO COLLECTOR FOR ONEIDA COUNTY, IDAHO.

No. 554.

Appeal from Supreme Court of Idaho Territory.

BRIEF FOR APPELLEE, BY JOS. K. McCAMMON.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1885.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

UTAH AND NORTHERN RAILWAY CO.

v.

WILLIAM F. FISHER, ASSESSOR AND EX-OFFICIO COLLECTOR FOR ONEIDA COUNTY, IDAHO.

No. 554.

APPEAL FROM SUPREME COURT OF IDAHO TERRITORY.

Brief for Appellee, by Jos. K. McCammon.

In the brief of appellant, page 10, the following statement is made:

"The railway itself occupies the reservation, not under territorial authority, but by virtue of a contract assented to by both the United States and the Indian tribes, and given legal effect by an act of Congress."

To fortify this fact reference is made to the act of July 3, 1882, 22 Statutes at Large, page 150. (This should be page 148.) Attention is called to the agreement set forth in the act, as follows:

"Now this agreement witnesseth that, for the consideration hereinafter mentioned, the said Soshone and Bannock Indians do hereby cede to the United States all that part of the present Fort Hall reservation, in the Territory of Idaho, described as follows, namely:" (Here follows the description.)

For the convenience of the Court, the whole act is appended.

ARGUMENT.

I.

As held by the Supreme Court of Idaho, the property belonging to the Utah and Northern Railway Company, which crossed the Fort Hall Indian reservation, is subject to taxation by the territorial authorities. The jurisdiction of the Territory over this particular reservation has been established by this Court in the case of Langford *v.* Monteith, (102 U. S., 145,) which overruled the judgment in the case of Harkness *v.* Hyde, (98 U. S., 476.) In the latter case the Court will remember the very question considered was whether the Fort Hall Indian reservation was within the jurisdiction of the Territory of Idaho; and answering this question in the negative, decided that the reservation was "as much beyond the jurisdiction, legislative or judicial, of the government of Idaho, as if it had been set apart within the limits of another country, or of a foreign State."

Subsequently, ascertaining that the terms of the treaty with the Shoshones, which was relied on in the Harkness and Hyde cases, were different from what was supposed, this Court took occasion to overrule the latter case. Thus the question in the present case is not an [illegible] one, but is specifically met by the ruling of the Court in Langford *v.* Monteith, as follows:

"Where no such clause or language equivalent to it is found in a treaty with Indians within the exterior limits of Idaho, the lands held by them are a part of the Territory and subject to its jurisdiction, so that process may run there, however the Indians themselves may be exempt from that jurisdiction." (102 U. S. Rep., 145.)

It must be assumed that the Court does not desire to hear argument on the questions at issue similar to those discussed in the two cases mentioned. However, in the view the appellee takes of this case, there are other reasons why the Court will affirm the decree of the Court below, independent of any cited authority.

II.

Relying on the statement of appellants' counsel, that the railway occupies the reservation by virtue of the act of July 3, 1882, (22 Stat., 148,) it will appear, by reference to the act, that the Indians resident on the Fort Hall reservation have parted with whatever title they possessed; in other words, all the lands occupied by the Utah and Northern Railway as right of way for stations, depots, sidings, &c., were ceded to the United States by the Indians, for which $6,000.00 consideration were paid to them.

This transfer of title to the United States was absolute, and was made in strict accordance with the twelfth article of the treaty with the Shoshones of July 3, 1868. (15 Stat. L., pp. 673–676.)

"No treaty for the cession of any portion of the reservation [Fort Hall Indian reservation] herein described which may be held in common shall be of any force or validity as against the said Indians, unless executed and signed by at least a majority of all adult male Indians occupying or interested in the same."

The act of July 3, 1882, constituted a ratification of the original agreement of cession executed in July, 1881. (22 Stat., 148.)

The lands so carved out of the reservation became *eo instanti* a part of the public lands of the United States. By the 3d section of the act of 1882, however, these lands were granted by the United States to the Utah and Northern Railway Company, for the uses and purposes of a right of way, and for depots, stations, sidings, &c. The Railway Company, therefore, in 1882, was occupying the public lands of the United States, not included within the limits of an Indian reservation. It held the same relation to the lands ceded by the Indians to the United States as it and other companies hold to other public lands of the United States under the provisions of the act of March 3, 1875, known as the right of way act, (18 Statutes at Large, 482.) To say that this Railroad Company cannot be taxed for and on account of the property on the right of way through the Fort Hall reservation is to deny the right of a Territory or State to levy taxes on the numerous roads crossing the public lands of the United States under the authority of the act of March 3, 1875. The logical conclusion is the same.

The attention of the Court is asked to the opinion of the Court below. (Record, 16–19.)

III.

The Railway Company, in its complaint, (Record, 1,) alleges its corporate existence as dependent upon an act of the legislature of Utah Territory, and an act of Congress of June 20, 1878. (20 Stat., 241.) By reference to the latter statute, it will be noticed that the privilege granted was for right of way through the public lands of the United

States, over a designated route, viz : by way of Marsh Valley, Port Neuf river, and Snake River Valley. The map of the United States, issued by the Interior Department, and in fact any atlas, will show that this line passes through the Fort Hall Indian reservation.

By the second section of the act of June 20, 1878, the Utah and Northern Company was made a railroad corporation in the Territories of Utah, Idaho, and Montana, with certain rights and privileges. It was provided, however, in the section, "that said corporation shall at all times hereafter be subject to all the laws and regulations in relation to railroads of the United States, or of any Territory or State through which it may pass. And suits against said corporation may be instituted in the courts of said Teritories or either of them having jurisdiction by the laws of such Territory." If, by the allegation in the complaint, it is intended to be asserted that the property in controversy in this suit is connected with the line of road constructed and in use from south to north through the reservation, as described in the first section of the act of 1878, then the appellee contends that the Company was made subject to all the laws and regulations of the Territory of Idaho in relation to railroads. Among these laws of the Territory are those which render the property of railroad companies subject and liable to taxation. The very purpose of the act of Congress was to place the Utah and Northern Railway Company on the same footing as other railroad companies in the Territories named. It cannot be safely asserted by the appellant that the provisio of section two could only refer to so much of the road as was not included within the boundaries of an Indian reservation, inasmuch as the only line of road described in the act lies within the Fort Hall reservation ; and therefore whatever other portion of the road might be excepted from the proviso of

the second section, the line so described through the reservation was specially within the purview of the act. It may be even contended that the act of June 20, 1878, in giving the Company the right of way through the reservation, repealed, *pro tanto*, the treaty with the Shoshone Indians. But whether the treaty was so repealed or not, Congress, in the same act which created the right of way through the reservation, extended the laws and regulations of Idaho over the Company so created and its property thereon. In view of the statement in appellant's brief, page 10, which is referred to and discussed under the second head of this brief, it is likely that the line of road follows the right of way ceded by the Indians to the United States, that is from east to west, and confirmed to the Company by the act of July 3, 1882. Out of abundant caution, however, it is thought proper to discuss the act of June 20, 1878, if it is considered by the Court to bear any relation to the case now specially under discussion.

The appellee respectfully contends that the judgment of the Court below should be affirmed.

JOS. K. McCAMMON,
Attorney for Appellee.

"CHAP. 268. An act to accept and ratify an agreement with the Shoshone and Bannock Indians for the sale of a portion of their reservation in Idaho Territory required for the use of the Utah and Northern Railroad, and to make the necessary appropriation for carrying out the same.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a certain agreement made by Joseph K. McCammon, Assistant Attorney-General, on behalf of the United States, with the Shoshone and Bannock Indians resident on the Fort Hall reservation, in the Territory of Idaho, be, and the same is hereby, ratified and confirmed, subject, nevertheless, to the conditions hereinafter mentioned. Said agreement is executed by a majority of all the adult male Indians of the Shoshone and Bannock tribes occupying or interested in the lands therein more particularly described, in conformity with the provisions contained in article eleven of the treaty with said Indians of July third, eighteen hundred and sixty-eight, and is in the following words, namely:

"This agreement, made this eighteenth day of July, eighteen hundred and eighty-one, between the Shoshone and Bannock Indians resident on the Fort Hall reservation, in the Territory of Idaho, represented by their chiefs and head men and heads of a majority of families, and being a majority of all the adult male Indians occupying or interested in the lands hereinafter described, of the one part, and the United States of America, represented by Joseph K. McCammon, Assistant Attorney-General, of the other part.

"Whereas the Utah and Northern Railway Company has applied for permission to construct a line of railroad from east to west through the Fort Hall reservation, and the said Indians have consented thereto, and for that purpose have agreed, for the consideration hereinafter mentioned, to surrender to the United States their title to so much of land comprised in said reservation as may be necessary for the legitimate and practical uses of said road:

"Now this agreement witnesseth that, for the consideration hereinafter mentioned, the said Shoshone and Bannock Indians hereby cede to the United States all that part of the present Fort Hall reservation in the Territory of Idaho described as follows, namely:

"A strip of land not exceeding one hundred feet in width (except at Pocatello Station, where it is two hundred feet) as will appear on maps hereto annexed, commencing on the eastern boundary of said reservation, striking the south bank of Port Neuf river, and thence following down Port Neuf valley, sometimes on the south side and sometimes on the north side of said Port Neuf river, until it reaches the Utah and Northern Railroad already constructed at a point about five miles east of Port Neuf Station on said road, a distance of about thirty-six miles, more or less; thence following said Utah and Northern Railroad already constructed, a distance of ten and seventy-three hundredths miles, to a point on said road about six miles west of said Port Neuf Station on said road; thence leaving said road already constructed and proceeding northwest along the Port Neuf river aforesaid, a distance of eight miles, more or less; thence deflecting from said river westward, and continuing to the west boundary line of said Fort Hall Indian reservation, a distance of about nineteen miles, more or less, from the Utah and Northern Railroad, as shown upon the map or plan thereof hereto attached, marked A; the same being intended to be hereafter used by the said Utah and Northern Railroad Company, its successors or assigns, as a right of way and roadbed, and containing by actual survey six hundred and seventy acres or thereabouts.

"Also the several pieces or parcels of land situate along and adjoining the said strip of land hereinbefore described as defined in the several plats or maps thereof, also hereto attached and marked, respectively, B, C, D, &c., the same being intended to be used by the said Utah and Northern Railroad Company, its successors or assigns, for depots, stations, sidings, and so forth, and containing in the whole, by actual survey, one hundred and two acres, more or less.

"In consideration of such cession, the United States

agrees to pay to the Shoshone and Bannock Indians the sum of six thousand dollars, being at and about the rate of seven and seventy-seven hundredths dollars per acre for the land so ceded, to be deposited in the United States Treasury to the credit of said Indians, upon ratification hereof, at five per centum per annum; the same to be in addition to any and all sums to which the above-named Indians are now entitled by treaty.

"All provisions of existing treaties not affected by this agreement to remain in full force and effect, and this agreement to be subject to ratification by Congress.

"Executed at the Fort Hall Agency, Idaho, the day and year first aforesaid."

"SEC. 2. That for the purpose of carrying the provisions of this act into effect the sum of six thousand dollars is hereby set aside, out of any moneys in the United States Treasury not otherwise appropriated, to be deposited in the United States Treasury to the credit of the Shoshone and Bannock Indians, and to bear interest at five per centum per annum, such interest to be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct.

"SEC. 3. That the right of way over the land relinquished by said agreement to the United States for the construction of said Utah and Northern Railroad, and the use of the several parcels of land so relinquished intended to be used for depots, stations, sidings, and so forth, for said railroad, are hereby granted to said Utah and Northern Railroad Company, its successors and assigns, for the uses and purposes in said agreement set forth; but the land or any part thereof relinquished to the United States by said agreement shall not be used for said railroad purposes by or for the Utah and Northern Railroad Company, its successors or assigns, except upon the condition precedent that the said company, its successors or assigns, shall, within ninety days from the taking effect of this act, pay to the Treasurer of the United States said sum of six thousand dollars hereby appropriated to be paid by the United States for the lands relinquished to the United States by said agreement, and shall within the same time file with

the Secretary of the Interior its written acceptance of the conditions of this section. Nor shall said land, or any part thereof, be continued to be used for railroad purposes by or for said Utah and Northern Railroad Company, its successors or assigns, except upon the further condition that said company, its successors or assigns, will pay any and all damages which the United States or said Indians, individually or in their tribal capacity, or any other Indians lawfully occupying said reservation, may sustain by reasons or on account of the act or acts of said company, its successor or assigns, its agents or employés, or on account of fires originating by or in the construction or operation of such railroad, the damages in all cases to be recovered in any court of the Territory of Idaho having jurisdiction of the amount claimed, upon suit or action instituted by the proper United States attorney in the name of the United States: *Provided*, That the said United States attorney may accept such sum of money in satisfaction of any such injury or damage as in his discretion may be just; and if so accepted before suit or action is commenced, no suit or action shall be instituted, and if accepted after commencement of suit or action, the same shall be dismissed at the cost of said company, its successors or assigns.

"SEC. 4. That all moneys accepted or recovered under the provisions of section three of this act shall be covered into the Treasury of the United States, and if accepted or recovered on account of damages sustained by said Indians as aforesaid, they shall be placed to the credit of said Indians in their tribal names, to be expended by the Secretary of the Interior, for the benefit of said Indians, in such manner as he may deem for their best interest, except in the case of an individual Indian, when the amount covered into the Treasury shall be expended for his sole benefit."

"Approved July 3, 1882."

116-28

BURGOYNE'S "Quick" Print, 148-150 Centre St., N. Y.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

UTAH AND NORTHERN RAILWAY COMPANY,
Apellant,

AGAINST

WILLIAM F. FISHER, Assessor and *ex officio* Collector for Oneida County, Idaho,
Appellee.

No. 554.

Reply to the Argument of the Appellee.

The whole argument of the appellee, so far as it is an answer to the brief filed by the appellant, is based upon the *assumed* fact that the Utah and Northern Railway is not situated upon the Indian Reservation, but is situated upon a strip of land conveyed by the Indians to the United States, and over which a right of way has been granted to the Railway Company by the United States.